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Supreme Court, U.S.
FILED
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No. 01-1481

In The

Supreme Court of the United States

Term, 2002

SUSAN M. WEICHERT,

Petitioner,

against

WILLIAM J. BROUSE, Treasurer of County of Oswego,

Respondent.

On Appeal from the Court of Appeals
State of New York

PETITIONER'S REPLY BRIEF IN OPPOSITION

Bert F. Halderman, Esq.
Of Counsel to Petitioner
6075 East Molloy Road, Bldg. 6
Syracuse, New York 13211
(315) 432-9896

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REPLY TO BRIEF IN OPPOSITION

This reply brief is filed by petitioner, pursuant to Rule 15.6 of the Rules of the Supreme Court of the United States.

Addressing the arguments first raised in the brief in opposition, petitioner respectfully alleges and shows to the Court as follows:

1. PETITIONER FILED THE SUMMONS AND COMPLAINT, PURSUANT TO CPLR §304, TO COMMENCE THE UNDERLYING PROCEEDING.

Petitioner and respondent are in agreement that this is the sole issue before this Court. Should this Court find for the appellant, this case should be remanded for further proceeding, and trial of the issues raised in the complaint.

It is undisputed that petitioner purchased an index

number, and the receipt thereof is time-stamped. Respondent concedes that a date-stamped pleading would be *prima facia* proof of filing. The date-stamped receipt for index number; the date stamped Request for Judicial Intervention (RJI); the issuance of the RJI, #37-00-0461, issued by the Clerk, and assigning Judge Nicholson; and the original initials and signature of the Honorable John J. Elliott, AJSC on the order to show cause, wherein it is stated, **"...upon the summons herein and the annexed complaint"**, clearly show, that the summons and complaint were filed and attached by a staple to the order to show cause, which was attached by a staple to the RJI which was time-stamped by the Clerk of Oswego County September 11, 2000. That clearly should be *prima facia* proof of filing.

In addition, this Court can take judicial notice of the procedure of the combined-court system of the State of New York, Oswego County, that no index number and RJI can be purchased at the Clerk's office without filing, at the same time, the original summons and complaint.

The person actually receiving and filing the original summons and complaint, and who time-stamped the RJI and index number receipt was Paula Ferdett. Petitioner contacted Paula Ferdett for a voluntary affidavit, swearing that she received and filed the said original papers, as an employee of the Oswego County Clerk, but she declined for fear of losing her job. On remand and discovery, petitioner is confident that Paula Ferdett if deposed, would verify the filing of the original summons and complaint.

Respondent suggests that the County Clerk could

time-stamp the receipt of the RJI, with attached order to show cause and summons and complaint, but not "file" them. And, at the same time, concedes that the date-stamped pleading would be *prima facia* proof of filing. This position is contradictory, untenable and flawed.

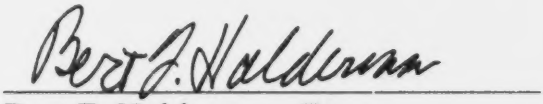
The summons and complaint were clearly "filed".

2. THE CONSTITUTION OF THE UNITED STATES, and especially the rights protected by the due process clause of the 5th and 14th Amendments thereto, were adopted to preclude just such abuse, that is, that petitioner's due process rights have been thwarted by those in authority in Oswego County, the combined-court system, in losing petitioner's filed summons and complaint, and then dismissing this action on the basis of such wizardry. Respondent would have this Court believe

that a violation of petitioner's due process is not a compelling reason for this Court to grant a petition for writ of certiorari. We disagree. What affects one citizen, affects all.

It is noteworthy that these constitutional issues were raised and preserved in all of the Courts below, which decision conflicts with relevant decisions of this Court. Supreme Court, Rule 10.

Dated: May 14, 2002.



Bert F. Halderman, Esq.
Of Counsel to Petitioner
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Syracuse, New York 13211
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